

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

THE ESTATE OF TIMOTHY	:	CASE NO.:
DEARWESTER, by and through its	:	
Administrator, Andrew S. Larkin	:	JUDGE:
5636 Bridgetown Road	:	
Cincinnati, Ohio 45248	:	
	:	
Plaintiff,	:	COMPLAINT & JURY DEMAND
	:	
vs.	:	
	:	
WEST COAST LIFE INSURANCE	:	
COMPANY	:	
343 Sansome Street	:	
San Francisco, California 94104	:	
	:	
Registered Agent:	:	
Vivian Imperial	:	
818 W. 7 th St., Ste. 930	:	
Los Angeles, CA 90017	:	
	:	
and	:	
	:	
PROTECTIVE LIFE CORPORATION	:	
2801 Highway 280 South	:	
Birmingham, Alabama 35223	:	
	:	
Registered Agent:	:	
Deborah Long	:	
2801 Highway 280 South	:	
Birmingham, Alabama 35223	:	
	:	
Defendants	:	
	:	

Now comes plaintiff, The Estate of Timothy Dearwester, by and through its Administrator, Andrew S. Larkin, Esq., by and through counsel, and for its cause of action, states as follows:

1. At all times relevant herein, plaintiff's Administrator, Andrew Larkin, Esquire is a partner with Rebold, Larkin & Murray, LLC, 5636 Bridgetown Road, Cincinnati, Ohio 45248.

2. At all times relevant herein, Andrew Larkin, Esquire is the duly appointed Administrator of the Estate of Timothy Dearwester, pursuant to Letters of Authority issued by the Warren County, Ohio Probate Court under case number PE20171310 and brings this action on behalf of the Estate of Timothy Dearwester, its heirs, assigns and beneficiaries. A copy of the Letters of Authority are attached hereto and marked as Exhibit 1.

3. At all times relevant herein, defendant, West Coast Life Insurance Company, is a company, corporation, and/or other business entity duly authorized to write insurance in the State of Ohio with its' principal place of business being located 343 Sansome Street, San Francisco, California 94119 and, among other things, is engaged in the business of providing life insurance to the general public, including Timothy Dearwester, deceased.

4. At all times relevant herein, defendant, Protective Life Corporation, is a company, corporation, and/or other business entity duly authorized to write insurance in the State of Ohio with its' principal place of business being located 2801 Highway 280 South, Birmingham, Alabama 35223 and, among other things, is engaged in the business of providing life insurance to the general public, including Timothy Dearwester, deceased.

5. Upon information, belief and the written representations of defendants, at all times relevant herein, defendant, West Coast Life Insurance Company is a subsidiary of defendant, Protective Life Corporation.

6. On or about May 8, 2017, Timothy Dearwester died in downtown Cincinnati, Hamilton County, Ohio 45202.

7. On June 14, 2017, plaintiff, Andrew Larkin, Esquire was appointed the Administrator of Estate of Timothy Dearwester by the Warren County, Ohio Probate Court.

8. On or about May 8, 2017, Timothy Dearwester had a valid contract of life insurance, Policy No. Z03131826, with defendant, West Coast Life Insurance Company and/or Protective Life Corporation (hereinafter “defendants”), and said policy provided term life insurance benefits in the amount of \$1,000,000.00.

9. Plaintiff, the Estate of Timothy Dearwester, by and through its Administrator, Andrew S. Larkin, Esquire, has properly made a timely claim for payment under the aforementioned policy and provided all necessary documentation to defendants.

10. Defendants, by and through their agents, servants and/or employees, have denied payment on the alleged basis that Timothy Dearwester, deceased, failed to make a premium payment, due and owing on a Six (6) month interval basis.

11. Life insurance policy Z03131826 expressly states that premium payments are to be made on an annual basis. A copy of the policy is attached hereto and marked as Exhibit 2.

JURISDICTION AND VENUE

12. This court has subject matter jurisdiction pursuant to, among other things, 28 U.S.C. 1332. The amount in controversy exceeds \$75,000.00 and this is an action by a plaintiff against defendants who are each citizens of different states. The underlying facts which support this Court's jurisdiction are set forth below in greater detail.

13. Venue is proper in this district pursuant to, among other things, 28 U.S.C. 1391. A substantial portion of the events or omissions occurred within this district.

COUNT ONE

14. Plaintiff, Estate of Timothy Dearwester, by and through its Administrator, Andrew Larkin, Esquire, refers to and incorporates the preceding allegations as if fully rewritten herein.

15. Defendants have failed to honor plaintiff, Estate of Timothy Dearwester's, proper and timely claim under Policy No. Z03131826 without reasonable justification therefore.

16. The failure of defendants to honor plaintiff, Estate of Timothy Dearwester's, claim under Policy No. Z03131826 constitutes a breach of the aforementioned insurance contract.

17. Plaintiff, Estate of Timothy Dearwester, by and through its Administrator, Andrew Larkin, Esquire, has demanded a full and fair settlement on behalf of the Estate of Timothy Dearwester of all claims in accordance with the terms of the insurance contract under Policy No. Z03131826.

18. Pursuant to Ohio Civil Rule 57 and Ohio Revised Code Sections 2721.01 through 2721.15, plaintiff, Estate of Timothy Dearwester, by and through its Administrator, Andrew Larkin, Esquire, seeks a declaration by this Court that the Estate of Timothy Dearwester is entitled to full coverage under Policy No. Z03131826 from defendants as a direct and proximate result of the death of Timothy Dearwester, in Cincinnati, Ohio on or about May 8, 2017.

COUNT TWO

19. Plaintiff, Estate of Timothy Dearwester, by and through its Administrator, Andrew Larkin, Esquire, refers to and incorporates the preceding allegations as if fully rewritten herein.

20. At all times relevant herein, The Estate of Timothy Dearwester, was the lawful beneficiary of a valid contract of insurance with defendants, and, in good faith, the provisions of said insurance policy were in compliance, including payment of premiums and timely notice of the claim.

21. Defendants intentionally, willfully, wantonly, and and/or maliciously failed to act in good faith toward plaintiff, Estate of Timothy Dearwester and Andrew Larkin, Esquire the duly appointed Administrator, by, among other things, failing to settle the aforementioned claim at a fair and reasonable amount in accordance with the terms of the insurance contract under Policy No. Z03131826, thereby exposing the Estate of Timothy Dearwester to loss as the policy beneficiary, without reasonable justification therefore.

22. As a direct and proximate result of defendants' failure and/or refusal to act in good faith, the Estate of Timothy Dearwester, has sustained damages,

including, but not limited to, financial loss of the policy benefits, legal fees and other miscellaneous and sundry costs and expenses.

COUNT THREE

23. Plaintiff, Estate of Timothy Dearwester, by and through its Administrator, Andrew Larkin, Esquire, refers to and incorporates the preceding allegations as if fully rewritten herein.

24. Defendants' acts and omissions, by and through their agents, servants and/or employees, were willful, wanton, malicious and/or in bad faith and/or with actual malice, fraud or insult and entitle the Estate of Timothy Dearwester to punitive damages, including legal fees and expenses.

WHEREFORE, plaintiff, Estate of Timothy Dearwester, by and through its Administrator, Andrew Larkin, Esquire, requests that judgment be entered against defendants, West Coast Life Insurance Company and Protective Life Corporation, ordering the following:

- a. Declaratory judgment that the Estate of Timothy Dearwester is entitled to full coverage under Policy No. Z03131826, plus all applicable and appropriate benefits, interest and costs;
- b. Plaintiff be awarded all costs of this action, including attorneys' fees and costs;
- c. Plaintiff recover compensatory and punitive damages in an amount to be determined, and,
- d. Recover such other relief as the Court deems just and proper.

/s/ Gary F. Franke

Gary F. Franke (#0029793)

Michael D. O'Neill (#0075195)

GARY F. FRANKE CO., L.P.A.

Attorneys for Plaintiff

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JURY DEMAND

Plaintiff hereby requests a trial by jury as to all questions of fact.

/s/ Gary F. Franke

Gary F. Franke

Attorney at Law